

## Remarks

Claim Rejections Under 35 USC § 101

Claims 11 and 12 are rejected under 35 USC § 101 because claim 11 recites a device inside a patient's body as well as a device outside the patient's body. Claim 11 was amended as recommended in the Office Action by including "adapted to be positioned inside a patient's body". Thus, the "101" rejection is overcome in this Amendment.

Reissue Applications

Claims 1-19 are rejected under 35 USC § 251, as the Office Action maintains that the claims of the reissue application were broadened in any one respect. The claims have been modified back to their original state, namely at least three stable operating positions, and "multistable operating states" has been changed back to "at least three stable operating states".

Recapture

The Office Action's concerns have been addressed by returning the claims to their original state.

Claim Rejections Under 35 USC § 102

Claims 13 to 18 stand rejected under 35 USC § 102 as being anticipated by Dorman.

To overcome this rejection, claim 13 is amended to recite that the implantable medical pump includes a plurality of throttle paths such that the passive regulator directs the fluid from the fluid reservoir to a selective one of the throttle paths, to vary a flow

rate setting. The '504 patent has only one outlet path 62, 65, 66. Thus, the '504 patent does not anticipate amended claim 13.

Claim Rejections Under 35 USC § 103

Claim 19 is rejected under 35 USC 103(a) as being unpatentable over Dorman in view of Reinicke. Dependent claim 19 should be allowable because it indirectly depends from allowable claim 13.

Inventors' Declaration

Inventor's Declarations of five inventors are submitted herewith.

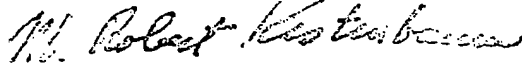
Those inventors are:

Hans Baumann, Karl-Heinz Otto, Kai-Jurgen Hinrichs, Wolfgang Graczyk, Jorg-Roger Peters

Wherefore further consideration and allowance of the application as amended is respectfully requested.

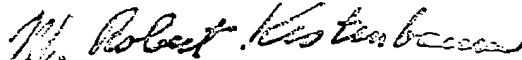
A three-month extension of time in which to respond to the outstanding Office Action is hereby requested. PTO-2038 authorizing credit card payment for the amount of \$510 is enclosed for the prescribed Small Entity three-month extension fee.

Respectfully submitted,



M. Robert Kestenbaum  
Reg. No. 20,430  
11011 Bermuda Dunes NE  
Albuquerque, NM USA 87111  
Phone (505) 323-0771  
Fax (505) 323-0865

I hereby certify this correspondence is being submitted to Commissioner for Patents, Washington, D.C. 20231 by facsimile transmission on June 13, 2005, fax number (703) 872-9306.



M. Robert Kestenbaum

**Attachment A**

**Inventors' Declarations:**

Hans Baumann, Karl-Heinz Otto, Kai-Jurgen Hinrichs, Wolfgang Graczyk, Jorg-Roger Peters

JUN 13 2005

PTO/SB/51 (09-04)

Approved for use through 04/30/2007. OMB 0851-0033

U.S. Patent and Trademark Office, U.S. DEPARTMENT OF COMMERCE

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(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)		Docket Number (Optional) TRI 42	
All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.			
Note: To appoint a power of attorney, use form PTO/SB/51.			
Correspondence Address: Direct all communications about the application to:			
<input type="checkbox"/> The address associated with Customer Number: [Redacted]			
OR			
<input checked="" type="checkbox"/> Firm or Individual Name	M. ROBERT KESTENBAUM		
Address	11011 DERMUDA DUNES NE		
City	ALBUQUERQUE	State	NM
Country	USA		
Telephone	(505) 223-0771	Fax	(505) 223-0865
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.			
Full name of sole or first inventor (given name, family name) HANS/ DAUMANN			
Inventor's signature <i>Hans Daumann</i>		Date 21.05.2005	
Residence 29223 Reisdorf, Rehdorfstr. 12a		Citizenship GERMAN	
Mailing Address 29223 Reisdorf Rehdorfstr. 12a			
Full name of second joint inventor (given name, family name) KARL- HEINZ OTTO			
Inventor's signature <i>Karl-Heinz Otto</i>		Date 31. May 2005	
Residence 24746 Kiel, Am Hookbehälter 13		Citizenship Germany	
Mailing Address 24746 Kiel, Am Hookbehälter 13			
Full name of third joint inventor (given name, family name) KAI- JURGEN HINRICHS			
Inventor's signature		Date	
Residence		Citizenship	
Mailing Address			
<input type="checkbox"/> Additional joint inventors or legal representatives are named on separately numbered sheets forms PTO/SB/52A or 02LR attached hereto.			

(Page 2 of 2)

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(REISSUE APPLICATION DECLARATION BY THE INVENTOR, page 2)		Pocket Number (Optional) TRI 42	
All errors corrected in this reissue application arose without any deceptive intention on the part of the applicant.			
Note: To appoint a power of attorney, use form PTO/BB/31.			
Correspondence Address: Direct all communications about the application to:			
<input type="checkbox"/> The address associated with Customer Number: [Redacted]			
OR			
<input checked="" type="checkbox"/> Firm or Individual Name	M. ROBERT KESTENBAUM		
Address	11011 JERUSALEM DUNES NE		
City	ALBUQUERQUE	State	NM Zip 87111
Country	USA		
Telephone	(505) 323-0771	Fax	(505) 323-0865
I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this declaration is directed.			
Full name of sole or first inventor (given name, family name) HANS DAUMANN			
Inventor's signature		Date	
Residence		Citizenship	
Mailing Address			
Full name of second joint inventor (given name, family name) KARL-HEINZ OTTO			
Inventor's signature		Date	
Residence		Citizenship	
Mailing Address			
Full name of third joint inventor (given name, family name) KAI-JÜRGEN HENRICH			
Inventor's signature		Date 03. June 2005	
Residence Germany		Citizenship German	
Mailing Address Hindenburgstrasse 20 24226 Heikendorf			
<input type="checkbox"/> Additional joint inventors or legal representative(s) are named on separately numbered sheets forms PTO/BB/02a or 02LR attached hereto			

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<b>DECLARATION</b>	<b>ADDITIONAL INVENTOR(S)</b> Supplemental Sheet
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Page 1 of 1

Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
WOLFGANG		GRACZYK	
Inventor's Signature <i>Wolfgang Graczyk</i>		Date 02.6.05	
Residence: City	State	Country	Citizenship
Schlochen Weg 5, 18147 Ralswiek			
City	State	Zip	Country
18147 Ralswiek			Germany
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
JORG - ROGER		PETERS	
Inventor's Signature <i>Jorg-Roger Peters</i>		Date 31 May 2005	
Residence: City	State	Country	Citizenship
24582 Bordesholm			Germany
Mailing Address			
City	State	Zip	Country
24582 Bordesholm			Germany
Name of Additional Joint Inventor, if any:		<input type="checkbox"/> A petition has been filed for this unsigned inventor	
Given Name (first and middle (if any))		Family Name or Surname	
Inventor's Signature		Date	
Residence: City	State	Country	Citizenship
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This collection of information is required by 35 U.S.C. 112 and 37 C.F.R. 1.63. The information is required to obtain or retain a benefit by the process which is to be used by the USPTO in processing an application. Confidentiality is governed by 35 U.S.C. 122 and 37 C.F.R. 1.11 and 1.14. This collection is estimated to take 21 minutes to complete, including reviewing, preparing, and submitting the completed application form to the USPTO. There will only be one submission of the information. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1480, Alexandria, VA 22313-1480. DO NOT SEND FEE OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1480, Alexandria, VA 22313-1480.

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